shall be approved by HUD and, except in those cases where the hospital is leased as permitted in § 242.72, shall possess the powers necessary and incidental to operating a hospital. Eligible proprietary or profit-motivated mortgagors may include for-profit corporations, limited partnerships, and limited liability corporations and companies, but may not include natural persons, joint ventures, and general partnerships. Any proposed mortgagor must demonstrate that it has a continuity of organization commensurate with the term of the mortgage loan being insured. For new organizations, or those whose continuity is necessarily dependent upon an individual or individuals, broad community participation is required.

[72 FR 67546, Nov. 28, 2007, as amended at 73 FR 35922, June 25, 2008]

§ 242.11 Regulatory compliance required.

An application for insurance of a mortgage under this part shall be considered only in connection with a hospital that is in substantial compliance with regulations of the Department of Health and Human Services and the regulations of the applicable state governing the operation and reimbursement of hospitals. A hospital that is under investigation by any state or federal agency for statutory or regulatory violations is not eligible so long as the investigation is unresolved, unless HUD determines that the investigation is minor in nature; that is, the investigation is unlikely to result in substantial liabilities or to otherwise substantially harm the creditworthiness of the hospital.

§ 242.13 Parents and affiliates.

As a condition of issuing a commitment, HUD may require corporate parents, affiliates, or principals of the proposed mortgagor to provide assurances, guarantees, or collateral to protect HUD's interests. The Commissioner may also require financial and operational information on the parent, other businesses owned by the parent, or affiliates of the proposed mortgagor and may also require a parent or affiliate to be regulated by HUD as to certain actions that could impact on the insurance of a mortgage loan for the benefit of the hospital.

§ 242.14 Mortgage reserve fund.

As a condition of issuing a commitment, HUD shall require establishment of a Mortgage Reserve Fund (MRF). The mortgagor shall be required to make contributions to the MRF such that, with fund earnings, the MRF will build to one year of debt service at 5 years following commencement of amortization, increasing thereafter to 2 years of debt service on and after 10 years following commencement of amortization according to a schedule established by HUD, unless HUD determines that a different schedule of contributions is appropriate based on the mortgagor's risk profile, reimbursement structure, or other characteristics. In particular, hospitals that receive cost-based reimbursement may be required to have MRFs that build to more than 2 years of debt service. Expenditures from the fund are made at HUD's sole discretion or in accordance with the mortgagor's MRF Schedule. Upon termination of insurance, the balance of the MRF shall be returned to the mortgagor, provided that all obligations to HUD have been met.

§ 242.15 Limitation on refinancing existing indebtedness.

(a) Some existing capital debt may be refinanced with the proceeds of a section 242-insured loan; however, the hard costs of construction and equipment must represent at least 20 percent of the total mortgage amount.

(b) In the case of a loan insured under Section 242/223(f), there is no requirement for hard costs. However, if there are hard costs, such costs must total less than 20 percent of the total mortgage amount.

[78 FR 8341, Feb. 5, 2013]

Subpart B—Application Procedures and Commitments

§ 242.16 Applications.

(a) *Application process*—(1) *Market need.* The approval process entails a determination of the market need of the proposal and stresses, on a market-wide basis, the impact of the proposed